IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 258 OF 2001

1. Diocesan Society of
   Education, through its
   Secretary, Fr. Tony
   Salema, residing at
   Altinho, Panaji, Goa.

2. St. Xavier's College,
   Mapusa, through its
   Principal, Rev. Fr.
   Antimo Gomes, residing
   at St. Xavier's College,
   Altinho, Mapusa, Bardez
   Goa.

3. Fr. Antimo Gomes,
   residing at St. Xavier's College,
   Altinho, Mapusa,
   Bardez, Goa.
   (Registered Addresses) ..... Petitioners

V e r s u s

1. University of Goa,
   a Body Corporate,
   through its Registrar
   Bambolim, Goa.

2. State of Goa,
   Through the Secretary
   Education, with office
   at Secretariat, Panaji,
   Goa.

3. Special Secretary,

Directorate of
Higher Education,
2nd Lift, 5th Floor,
18th June Road,
Junta House,
Panaji, Goa.
(Registered Addresses) ..... Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. J. Godinho, Advocate for the Petitioners.

Ms. A. A. Agni and Ms. N. Narvenkar, Advocate for Respondent no.1.

Mr. H. R. Bharne, Government Advocate, for Respondent nos. 2 and 3.

CORAM: **R. M. S. KHANDEPARKAR &**
N.A.BRITTO, JJ.

DATE : **08.02.2006**

JUDGMENT (Per N.A. BRITTO, J.)

The Petitioner no.3 was the Principal of the Petitioner no.2-College, run by Petitioner no.1-Society. In this Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioners, inter alia, assail the action of withholding of consent by respondent no.2-State of Goa by their letter No.9/12/97-HE dated 03.05.2000 and consequently the non-

payment of the salary of the Petitioner no.3 for the period from 01.07.2001 to 31.05.2002 and that of respondent no.1-University, in withdrawing the consent earlier given by their letter No. GU/B/XVR/12-1/2001/2796 dated 03.09.2001, for the re-appointment of Petitioner no.1-Principal.

2. Some more facts are required to be stated to dispose of the present Petition.

3. The Petitioner no.3, was appointed as a Principal by the other Petitioners on 20.06.1991 and he was to attain the age of superannuation i.e. 60 years on 05.03.2000. As the other Petitioners desired to re-employ the Petitioner no.3 well prior to his attaining the said age of superannuation on 31.03.2000, a letter dated 03.08.1999 was addressed by Petitioner no.1 to the respondent-University seeking their clarification whether it would be open to the University to re-employ superannuated Teachers since the age of retirement of Teachers including Principals, was 60 years. The respondent-University by their letter dated 13.08.1999, informed the Petitioner-Society that the re-employment of superannuated Teachers including Principals was governed by Statute SA 19(xx). The Petitioners under a mistaken belief that they would require permission of the

Directorate of Higher Education to re-employ the said Principal, wrote letters to the University as well as to the Government seeking their approval to re-employ the said Principal for a further period of two years from June 2000, in the light of the above said Statute. Some correspondence then followed and later by letter dated 03.01.2000 (annexure 'E'), the Petitioner-Society was informed that the approval of the respondent-University was necessary for the re-employment of the said Principal and they were requested to obtain the same from the University in the first instance. The respondent-University by their letter dated 12.02.2000, (annexure 'G'), informed the Petitioner-Society that the Government of Goa as per its policy had informed that no extension or re-employment beyond the age of superannuation should be granted as a matter of course and that any extension/re-employment without the approval of the Government will not be eligible to receive salary grant on that count and further informed the Petitioner-Society to obtain necessary NOC approval from the Government. By letter dated 14.02.2000, the Petitioner-Society requested the respondent-University that the University should issue their NOC first as informed to them by the respondent-Government vide letter dated 03.01.2000 and subsequently by letter dated 15.02.2000 (annexure 'J'), the respondent-University conveyed its approval for re-employment of the said Principal

with effect from 01.04.2000 till the last date of the second term of the academic year 2001-2002, subject to obtaining a NOC from the Government under the provision of Statute SA-19(xx). By letter dated 08.10.1999, (annexure 'K'), written on behalf of respondent-State, the respondent-University was asked whether the re-employment of the said Principal was approved by the Executive Council and if the directives given vide letter dated 29.04.1997, were complied with. By letter dated 03.05.2000, (annexure 'L'), the respondent-State hardened its stand and informed the Petitioner-Society that the Government had not agreed for the re-employment of the said Principal for two years.

4. The Petitioner-Society by yet another letter dated 16.06.2000 (annexure 'M'), informed respondent-State about the NOC given by the respondent-University and again sought the approval for re-employment of the said Principal for the said period of two years and the respondent-Government by yet another letter dated 13.07.2000, (annexure 'N'), informed the Petitioner-Society that the respondent-State Government had already turned down the request of the Petitioner-Society for the re-employment of the said Principal by their letter dated 03.05.2000 and further informed that any action by the said Principal would be illegal and

would not be accepted for processing Government documents such as pensions/salary grants and that the said Principal could also not sign any correspondence for the approval of the Government and that he would also not be entitled to receive any salary w.e.f. 01.04.2000. By another letter dated 08.08.2001, (annexure 'O'), the Government took objections to letter dated 27.07.2001 having been signed by the ex-Principal and directed the Principal to revise the salary estimate disallowing the salary grant of the ex-Principal and further informing that the second installment of salary grant would be released after the receipt of the revised estimate. On 20.08.2001, the Petitioner-Society was invited for a meeting with the Special Secretary of Higher Education and the Petitioner-society was informed that there were lot of complaints against Petitioner no.3 and, therefore, the permission for re-employment could not be granted and the secretary of the Petitioner-Society told the said Secretary that they had never received any complaints against him.

5. The case of the Petitioners is that at the meeting of the Governing Body of the Petitioner-Society held on 02.08.2001, after seeking legal advise, the Petitioner-Society found that the approval of the Government was not required to be obtained in the light of clear provisions

of the said Statute no. SA-19(xx), which exclusively conferred powers to grant approval for re-employment for superannuated Teachers on the respondent-University and the Petitioners also found, on legal advise, that the respondent-Government had no role to play in the matter for such grant of re-employment and any action on the part of the Government not to recognize the approval and seek to overrule and not to abide by the approval, would be an ultra vires act on the part of the Government and, therefore, it was decided that the legal position be brought to the notice of the Government in writing, but at the meeting held on 20.08.2001, with respondent no.3, the Secretary of the Petitioner-Society, brought to his notice that the action on the part of the Government was ultra vires the provisions of the Goa University Act and the Statutes framed thereunder and despite that the Government persisted in his action and refused to release the second installment of salary grant for the months of August to November, 2001 and when the person authorized by the College called in the Accounts Section of the Office of the Directorate of Higher Education, he was informed that the said cheque would not be handed over to the said employee Silvestre Rodrigues. The Petitioners contend that the said action on the part of the respondents was again unwarranted, arbitrary, malafide and illegal in as much as the Government and its Special Secretary,

Directorate of Higher Education were trying to achieve by indirect means what they could not do by direct means and, in fact, the Government started pressurising the Petitioner-Society and the College to oust the said Principal from the post of Principal, when he was duly re-employed by the Petitioner-Society after obtaining approval from the respondent-University. The Petitioners' case is that once the University permitted the re-employment of the Principal for a period of two years, the action on the part of the Government by coercive means sought to be imposed on the Petitioner-College as reflected in the said letters at annexures 'L', 'N' and 'O', was arbitrary, illegal, ultra vires and tentamounts to an action vitiated by malice in law.

6. The respondent-University has not filed any affidavit in reply but it can be seen from Para 16 of the reply filed on behalf of the Government that the respondent-University had earlier informed by their letter dated 07.12.1999 (exhibit R5), that the Statutes of the University were framed as per the guidelines issued by the University Grants Commission, which, inter alia, contained the provisions for re-employment of teachers/Principal after superannuation and the guidelines issued by the Government by letter dated 02.09.1993, were scrupulously followed for

granting re-employment of Teachers/Principals of affiliated Colleges. The Government was also informed that necessary action would be initiated for amendment of the Statute as suggested.

7. The contention of the Government is that it was the consistent policy of the Government taken in the Cabinet meeting held on 06.01.1992, not to grant any extension in service beyond the age of superannuation to any Government Servant in future, and in case of extension of services in any particular case, it should be brought before the Cabinet for its consideration and approval and that was the general policy of the government. Further it is the contention of the Government that by letter dated 02.09.1993, (exhibit R2), the said policy was conveyed to the University, which was to be made applicable, mutatis mutandis, to all employees to whom the Government had to pay the salary through public exchequer and since the Petitioner-Society was availing aid from the Government as per latest pattern of assistance fixed by letter dated 24.08.1998, the permission of the Government was necessary to grant extension. It is also the contention of the Government that permission of the Government was necessary even as regards the Statute framed by the University and more particularly involving financial implications. It is also

the contention of the Government that by letter dated 29.04.1997 (exhibit R1), the University was informed to amend the Statute so that all cases of re-employment should be approved by the Executive Council of the University and by the State Government but, no amendment was carried out to the relevant provisions of the Statute. The Government has contended that the Petitioner-Society had no right in law to give extension/re-employment to Petitioner no.3 and that the claim of the Petitioners was misconceived and not maintainable in law and, therefore, the Petitioner no.3 was not entitled for salary from the Government with effect from 01.04.2000, though salary grant to Petitioner no.3 was released for the period from 01.04.2000 to 30.06.2001, inadvertently. At the cost of repetition, it may be stated that it is the firm contention of the Government that the Petitioner-Society is obtaining grants from the Government and the fact that the Government has not approved the said Statute SA-19(xx) (107/20), it is but natural that the prior approval of the Government was necessary for the re-employment of the Petitioner no.3 and, in any event, the respondent-University had not given any approval for the re-employment of the Petitioner no.3, the one having been given being a conditional one, subject to the No Objection Certificate from the Government and, therefore, the Petitioners' contention that the Government

had no role to play in the matter, was without any basis or foundation.

8. We have heard the learned Counsel on behalf of the parties at length. Shri Bharne, the learned Government Advocate has placed before us the amendment carried out to Goa University Act, 1984, by virtue of the Goa University (amendment) Act, 2002, which is deemed to have come into force from 30.11.2001, and by virtue of which, the age of retirement of every employee of the Goa University and the Colleges affiliated to it, whether aided or not and falling in the teaching or non-teaching category including Principals of such Colleges, except 'D' category employees, has been reduced to 58 years, notwithstanding anything contained in any other provisions of the said Act or Statutes and Ordinances of the University or any other law for the time being in force or notification, rules, regulations, decree, order or judgment of any Court, Circular or instructions.

9. Statute SA-19(xx), which deals with superannuation and re-employment, reads as follows:-

> “The age of superannuation for teachers will be 60 years and, thereafter no extension in service shall

> be given. However, a teacher including a Principal attaining the age of retirement, i.e. 60 years, any day between the first day of the first term and the last day of the second term, may be re-employed by the University or the college as the case may be, on the last salary drawn. It will be open to the University or the College to re-employ the superannuated Teacher/Principal from the last day of the second term upto the day he/she attains the age of 65 years on such terms and conditions as may be mutually agreed upon, provided that his/her basic pay is not fixed at any stage above the basic pay last drawn by him/her. He/she will also be entitled to all other benefits concomitant with the said basic pay."

A plain reading of the above Statute clearly shows that the choice is of the University or the College, as the case may be, to re-employ the superannuated Teachers/Principals. The said Statute does not contemplate either taking of a NOC from the University or for that matter, the approval of the Government. The University is an independent and autonomous body created by the Goa University Act 1984, (Act, for short), and governed by Statutes and Ordinances framed thereunder. The Statutes are made under Section 22 of the Act. They are made by the Executive Council of the

University which, in terms of Section 18 of the Act, is the principal academic body of the University. It can be seen from the letter dated 07.01.1993, (Exhibit R 8) as well as from letter dated 24.02.1993 (Exhibit R 10), that the Secretary (Education) and the Secretary (Finance), are ex-officio members of the Executive Council. In other words, the Government has sufficient representation on the Executive Council. The said letter dated 24.02.1993, (Exhibit R 10), written by the Directorate of Education to the respondent-University, in a way, sums up the correct position in law namely that the Executive Council has powers to frame the Statutes bearing all aspects of functioning of the University and the Institutions affiliated to it including the Statutes involving financial implications. The Government may have their own policies as regards the retirement of employees but the same cannot be forced upon the University by the Government in case the University which is an autonomous and independent body does not wish to follow them. The Government may only persuade the University to follow its policies but cannot direct that they be followed and being so, the Government is not expected to interfere in its internal affairs. The Statutes whether having financial implications or not are made by the Executive Council and once the same are made and assented to by the Visitor/Chancellor, as required by the Act, they are the law which governs

the University as well as the Colleges affiliated to it and is required to be followed by one and all including the Government. Government cannot impose its will upon the University even in financial matters if the Statutes provide otherwise. That would be interfering with the internal affairs of the University which is independent and autonomous body. The contention of the Government that since it gives aid to the Petitioner-College, that it can pull the strings of the University or Colleges affiliated to it and dictate its will in the matters of re-appointment of the Principal is ill-founded and the same cannot be supported by Statute SA-19 (xx). If at all, the Petitioners sought permission from the University or for that matter from the Government, it was under a mistaken belief, that the same was required when in fact the Statute SA – 19 (xx) does not at all require the same to be obtained by the College before the re-employment of a superannuated Teacher or Principal that being a matter between the College and the Principal. No doubt, it would have been better and advisable for better administration of Colleges that in case of re-employment, that a provision was made in the said Statute that the prior permission should be taken from the Executive Council but as long as there is no such provision made in the Statutes neither the University nor the Government could insist that a College takes their permission before a Teacher or Principal is re-appointed

in terms of the said Statute SA-19 (xx). The contention of the Government that because it gives aid to the said College and since re-employment would naturally involve financial implications, that its permission ought to have been taken, is to say the least misconceived and totally ill founded and deserves to be rejected. Cases similar to the case at hand, came up for consideration before the Supreme Court in the case of "***K. Kuppusamy & another Vs. Staff of T. N. & Others" reported in ((1998) 8 S.C.C. 469***, wherein the Supreme Court stated thus :-

> "The University is an autonomous body and, therefore, the State Government will not be entitled to interfere with the internal administration of the University notwithstanding the fact that the State Government is the funding body until and unless the University statutes provide for the same or there is any Act of legislation conferring that power on the State Government"

A similar point was also raised on behalf of the Government before the Division Bench of this Court in ***Writ Petition No. 121/2001*** in the case of ***Smt. Vaisali Samant Vs. State of Goa & Others.*** (to which, one of us

Britto, J. was a party) and it was held that the Government would be at liberty to amend the Act and make provision that whenever a Statute framed by the University saddles additional financial liability on the Government that prior approval would be necessary to frame such a Statute but till then, once a Statute is duly framed by the University and approved by the Visitor(now the Chancellor), as required under the Act, that would be the law which the University as well as the Government would be required to follow. It was also observed that the Government had no other option but to bow down to the said law of the Statute, as it was then in force.

10. The amendment carried out to the Act by virtue of Goa Act 23 of 2002, referred to hereinabove, by which, the retirement age has been reduced to 58 years, can have no application to the case of Petitioner-Principal, which is a case of re-appointment and not retirement, both concepts being different in service jurisprudence and which was done in terms of the said Statute and, therefore, was perfectly legal in all respects and, therefore, the respondent-Government was bound to pay the Petitioner for the period the Petitioner has not been paid.

11. The Division Bench by interim Order dated 12.09.2001, had concluded that, prima facie, that Statute SA – 19 (xx) did not give any power or authority either to the State or University to stop the Petitioner no.1 from re-employing or continuing Petitioner no.1 and that no permission was required either from the University or the State, though initially it was granted by the University but came to be withdrawn on 03.09.2001. With respect, we endorse that conclusion. It was made clear that in case the Petitioner succeeds in the Petition, the State shall pay the entire amount/aid to the Petitioner no.1 within a period of one month with interest that may be fixed by this Court at the time of hearing this Petition. Further, it was ordered that in the meanwhile, the State shall not recover any amount from the Petitioner, which is already paid through the salary of Petitioner no.3. It was also made clear that the State should not withhold the payment or any other aid given to the Petitioner no.1 except that for the post of the Principal.

12. We have already noted that the Petitioner-Principal has not been paid from 01.07.2001 to 31.05.2002 and since the appointment of Petitioner-Principal was in accordance with the said Statute, the respondent-Government is bound to pay the Petitioner his re-employment

salary with pending and future interest at the rate of 6% within a period of 30 days from today.

13. As a result, the Petition deserves to succeed. In the light of above we hold that the refusal of consent by the Government by letter dated 03.05.2000 and withdrawal of consent by the University by letter dated 03.09.2001, as arbitrary, illegal and without authority of law. Rule made absolute on the above terms with costs of Rs.2,000/- to be paid by respondent no.2-State, to Petitioner no.3-Principal.

R. M. S. KHANDEPARKAR, J.

N. A. BRITTO, J.

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